

REMARKS/ARGUMENTS

In response to the Office Action (FINAL REJECTION) mailed on February 28, 2005 finally rejecting claims 1-10, which is a response to a Response filed by Applicants on December 15, 2004 in response to the Office Action dated September 29, 2004. Claims 1-16 are pending in this application. Claim 1 has been amended in order to overcome rejections under 35 U.S.C. §102 and §103. Claims 11-16 have been added to further define the invention.

Rejections under 35 USC §102 and §103 over Walter

(a) The Office action rejected claims 1, 3-5, and 7-10 under 35 USC §102(b) as being anticipated by Walter et al. (US 5,686,835), and claims 2 and 6 under 35 USC §103(a) as being unpatentable over Walter et al. (US 5,686,835). Applicant respectfully submits that the amendment to independent claim 1 above (for which claims 2-10 depend therefrom), and the associated arguments below, place the claims 1-10 in a condition for allowance over Walter.

(b) The present invention is directed to a bird feeder for preventing unwanted animals, such as squirrels, from gaining access to predetermined feeding chambers through the use of a removable guard that is adapted to cover the top opening of the top locking device disposed over the open top of the feeding chambers. (See instant Abstract)

Claim 1, as amended, recites:

1. *(Currently amended) A squirrel proof bird feeder, comprising:*

(a) a base;

(b) one or more feeding chambers, wherein a bottom end of said one or more feeding chambers being affixed to said base;

(c) a top locking device, wherein a top end of said one or more feeding chambers opposite to said base being disposed within said top locking device, said top lock device includes a open top to access said top end of said one or more feeding chambers; and

(d) a removable guard that is capable of being disposed along a surface of said top locking device, wherein said removable guard has one or more guard units, wherein each guard unit of said one or more guard units being adapted to cover at least a portion of said open top of said top locking device, and wherein said removable guard extends horizontally outward beyond a feeding chamber to form an overhang to protect feed within said one or more feeding chambers and feeding birds below from ill-climate weather, whereby said covered portion of said open top of said top locking device prevents the squirrel from substantially accessing feed in said one or more feeding chambers below said covered portion of said open top while allowing the squirrel access to feed in a portion of said one or more feeding chambers not substantially below said covered portion of said open top of said top locking device.

(emphasis added)

(c) The Walter reference is directed to a bird feeder having a upper cover portion 66 adapted as a funnel to facilitate the filling of the bird feeder. (see Walter Abstract) The cover is designed to cover the top openings 58 of the tubes 50. (see Walter Col. 3, ln 47-48) Thus, Walter's feeder is designed to prevent an animal gaining access to the feeding chambers from the top portion of the feeding chambers, in contrast to the presently claimed feeder, which is designed to provide flexible guard options to allow an animal to gain access to a predetermined feeding chamber from the top opening as well as to protect feed within the feeding chamber and to protect feeding birds from ill-climate weather. Because of the different functions performed, Walter stresses an easier way to refillable feeding chambers with a invertible cover to function as a funnel, while the presently claimed invention stresses a removeable guard for top opening feed access as well as an overhang to shelter a feeding bird.

Applicants have amended claim 1 to more clearly distinguish the present invention from the bird feeder of the Walter reference. It has now been clarified that the guard is *removable and adapted to cover a portion of said open top of said top locking device*. Figures 1(a) and 1(b) of

the present application shows that the guard can be adapted to cover the entire top opening of the locking device. Further, Figure 3 of the present application shows that the removable guard can be adapted to cover only a portion of the open top of the top locking device. This effectively exposes the interior of select feeding chambers to wanted animals.

Figure 5 from the Walter reference was attached to the Office action with an annotation referring to the guard, a non-referenced feature on lower portion 60. The Walter reference does not specifically discuss the guard, however it appears that the guard extends horizontally beyond the vertical shaft, but the guard does not provide access to the feed if removed from the bird feeder. Though the function of the guard is not disclosed, the guard appears to serve the function as only an overhang to protect a feeding bird on the lower perch from the environmental conditions, such as rain.

The Walter reference discloses a lower portion 60 that includes a guard (not referenced) and a recess (not referenced). The recess contains a plurality of depending collars 64 releaseably engaged to the top open ends 58 of the tubes 50. (Fig. 5, col. 3, lines 35-40) Walter discloses that the interior of each tube 50 is accessible through collars 64 of lower portion 60 after the removal of upper portion 66 without detaching the lower portion 60 (which includes the non-referenced guard). (Col. 3, lines 40-44). Walter teaches that access to the top ends 58 of the tubes 50 is gained upon removal of upper cover portion 66. (col. 3, lines 45-50). Further, Walter discloses that lower portion 60 (including the non-referenced guard) is not intended to be detached to gain access to the top ends of the tubes 50. (Col. 3, lines 40-44)

Since the interior of each tube 50 can only be accessed by removing upper portion 66, the mere presence of the guard does not prevent or allow animals from accessing the feed from the top open ends 58 of tubes 50. Therefore, removing the non-referenced guard from Walter's bird feeder will not effect the functionality of Walter's bird feeder with regards to animal access to feed from the top open ends 58 of tubes 50. Further, Walter does not disclosed or suggest that the non-referenced guard is or should be removably connected from the bird feeder at any stage

of use. Therefore, Walter does not teach or suggest a removable guard as now claimed by Applicants.

Further, the Walter reference does not disclose a guard as claimed by Applicants that provides the user with flexible, selective configuration of the guard with one or more units to cover the feeding chambers entirely, partially, or not at all, while providing shelter for feeding birds. Additionally, the Walter reference does not teach or suggest a structure that partitions the feeding chambers for the purpose of allowing access to the top openings of the feeding chambers by animals.

With respect to the rejections of claims 2-10, the Action asserts that all of the limitations are fully taught by or obvious in light of the Walter reference, Applicant respectfully disagrees. Since dependent claims 2-10 dependent from independent claim 1, which is now believed to be in condition for allowance, Applicants assert the dependent claims 2-10 are also in condition for allowance.

Therefore, Applicants respectfully request that based on independent claim 1 amendments and the above comments, the Examiner withdraw the rejections under 35 U.S.C. §102(b) and under 35 U.S.C. §103(a) with regards to amended independent claim 1 and dependent claims 2-10, which depend from independent claim 1.

Since the present amendments of independent claim 1 overcomes the 35 U.S.C. §102(b) and 35 U.S.C. §103(a) rejections of all dependent pending claims and new claims 11-16 further claim subject matter patentably distinguishable from the Walter reference, this amendment should place the present RCE application in condition for immediate allowance. Applicants respectfully request that a timely Notice of Allowance be issued in this case.

The Commissioner for Patents is hereby authorized to charge any deficiencies to or credit any overpayment to Deposit Account No. 03-2410, Order No. 30394-101.

Appl. No. 10/762,992
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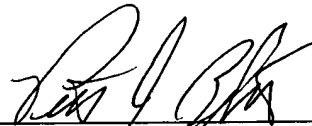
The following information is presented in the event that a call may be deemed desirable
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Respectfully submitted,
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